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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,492	08/18/2003	Joey Jorgenson	ONEI3 - P2966	5486
21259	7590	03/27/2006	EXAMINER	
J MARK HOLLAND & ASSOCIATES 3 CIVIC PLAZA SUITE 210 NEWPORT BEACH, CA 92660			HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	
DATE MAILED: 03/27/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/643,492	JORGENSEN, JOEY	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alissa L. Hoey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 20 January 2006.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-37 is/are pending in the application.  
 4a) Of the above claim(s) 15-28 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-14 and 29-37 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date: _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to amendment received on 01/20/06. Claims 1, 7, 9, 11, 29, 30 and 37 have been amended. Claims 1-14 and 29-37 are finally rejected below.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 7, 9, 11 and 29 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no support in the originally filed disclosure for the second portion/stretchable section not extending along the front portion of the garment.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 1-14 and 29-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ragot et al. (US 2003/0208829).

In regard to claim 1, Ragot et al. teaches board shorts (10) that are inherently worn during surfing or similar activities (paragraph 0003). A first portion fabricated from a relatively less elastic material (12,16, 30, 32) and the first portion comprising the majority of the shorts (paragraph 0009). A second portion (18, 20, 24) fabricated from relatively more elastic material and the second portion configured and positioned in the shorts to provide elastic stretch of the second portion during movement of the wearer's body (paragraph 0016). Further, Ragot teaches the second portion being pieces of material within the first portion of the shorts. The path extending from the front of one thigh of a first leg of the short, upward along the first leg, around the side of the shorts to the back of the shorts, across the back of the shorts, around the other side of the shorts and downwardly along the second leg to the front of the second thigh of the shorts (figures 1-3).

However, Ragot fails to teach the second material portion being a single undivided path of material.

It would have been obvious to one having ordinary skill in the apparel arts to have provided the second material portion being a single undivided path of material of pieces of material making up the path, because as long as the second material portion provides flexion points to the user wearing the garment the single strip of material or pieces of material could be used and as supported in Applicant's speciation on page 6, lines 3-5.

In regard to claim 2, Ragot teaches the second portion including an elongated section extending from a lower edge of the first leg of the shorts around, behind and across the buttocks area of the shorts and down to a lower edge of the second leg of the shorts (figures 1 and 2, identifiers 24, 20 and 18).

In regard to claim 3, Ragot teaches the short (10) being configured to be sized relatively loose on the wearer and the second portion is sized and positioned to return to a relatively outstretched condition after the movement of the wearer's body (paragraph 0014-0015).

In regard to claim 4, Ragot teaches the second portion being positioned as an elongated strip of material connected at most of it's edges to the relatively inelastic first portion material (figures 1 and 2, identifiers 24, 20, 18, 14, 30, 32).

In regard to claims 5-14 and 33 Ragot fails to teach the stretchable material being an electrometric foam or a 4-way stretch neoprene material.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to have provided the stretchable material being an electrometric foam or a 4-way stretch neoprene material because Applicant has not disclosed that the stretchable material being an electrometric foam or a 4-way stretch neoprene material provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the stretchable material being electrometric foam, 4-way stretch neoprene or elastane fibers because as long as the stretch panel is made out of stretchable material that facilitates garment

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expandability, improved wearability, increased comfort and extended garment life and as detailed in Applicant's specification on page 5, lines 1-10 and page 22, lines 7-12 the type of stretchable fabric can be one of many stretchable materials known in the art. Therefore, it would have been an obvious matter of design choice to modify Ragot to obtain the invention as specified in claims 5-14 and 33.

In regard to claim 7, Ragot teaches a board short (10) constructed substantially from relatively less-elastic ("non-stretchable") material (paragraph 0023), including a relatively more elastic integral stretch panel affixed adjacent frontal thigh areas of opposing leg sections and transversing between those front areas in a continuous arcuate path around the sides and back of the short. The integral stretch panel (18, 20, 24) positioned between the relatively less elastic material (12, 32, 14, 30) to form an integral portion of the garment. An integral stretch panel capable of being in a relatively loose and unstretched position when the wearer is in a standing position.

However, Ragot fails to teach the more stretchable material portions not extending around the front of the short.

Examiner notes that the specification fails to teach the stretchable material portions not extending around the front of the short. Further, Applicant fails to teach any criticality of why the stretchable material portions cannot extend around the front of the short. Therefore, without proper teaching in the specification the stretchable material portions extending around the front of the shorts does not effect the flexion zones for the user of the shorts.

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In regard to claim 8, Ragot teaches the stretch panel comprises an elongated strip fabricated within the body of the short (figures 1 and 2).

In regard to claim 9, Ragot teaches the garment fabricated from a material other than that of the stretch panel (paragraph 0023). The garment having stretch means (18, 20, 24) at a selected positioned in the body of the garment and inherently the garment is sized to fit relatively loosely on the wearer. The stretch means are capable of permitting expansion of the garment during certain flexing of the wearer's body (paragraph 0026). The stretch means are substantially bisecting the body of the garment (paragraph 00016-00017). The stretch means extending between adjacent lower front areas on opposite extremity sections of the garment in a path (figures 1-3).

However, Ragot fails to teach the more stretchable material portions not extending around both the front and back of the wearer.

Examiner notes that the specification fails to teach the stretchable material portions not extending around both the front and back of the wearer. Further, Applicant fails to teach any criticality of why the stretchable material portions cannot extend around both the front and back of the wearer. Therefore, without proper teaching in the specification the stretchable material portions extending around both the front and back of the wearer does not affect the flexion zones for the user of the shorts.

In regard to claim 10, Ragot teaches the stretch means comprises an elongated strip of stretch material integrally fabricated within the body of the garment (18, 20, 24).

In regard to claim 11, Ragot teaches board shorts (10) for use during surfing or similar activities, including a central portion fabricated from a material other than the

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stretch panel material and configured to loosely cover a wearer's lower torso (paragraph 0023). The stretch panel extending in an acruate manner through and forming a part of the central portion (18). The stretch panel curving form the upper back of the shorts around the sides of the wearer and downward to lower front thigh portions of the shorts (figures 1-3).

However, Ragot fails to teach the more stretchable material portions not extending across the front of the wearer.

Examiner notes that the specification fails to teach the stretchable material portions not extending across the front of the wearer. Further, Applicant fails to teach any criticality of why the stretchable material portions cannot extend across the front of the wearer. Therefore, without proper teaching in the specification the stretchable material portions extending across the front of the wearer does not effect the flexion zones for the user of the shorts.

In regard to claim 12, Ragot teaches at least one leg portion connected to the central portion and the stretch panel extending through and forming a part of the at least one leg portion (figure 1 and 2).

In regard to claim 13, Ragot teaches at least one leg portion configured to loosely cover at least the upper section of one of the wearer's legs (paragraph 0005-0009).

In regard to claim 14, Ragot teaches the stretch panel being positioned within the shorts to stretch from its normal relaxed state in response to leg movement of the wearer (paragraph 0005-0009).

In regard to claim 29, Ragot teaches a garment (10) adapted to be worn about a portion of the body and at least one limb of a person. The garment comprising a first limb section adapted to receive within and permit to pass there through one limb of the person (22). A torso section having a back portion and a front portion, the back portion and the front portion adapted to receive a portion of a person's torso (figures 1 and 2). An elongated strip of material (18, 20, 24) relatively more stretchable than adjacent materials (12, 32, 30, 14) in the limb section and the torso section. The elongated strip positioned across at least substantially all the back portions of the torso section and extending into a front portion of the first limb section so that certain rotations of the limb with respect to the wearer's torso would inherently cause the elongated strip to stretch (figures 1 and 2).

However, Ragot fails to teach the more stretchable material portions not extending across the front of the torso section.

Examiner notes that the specification fails to teach the stretchable material portions not extending across the front of the torso section. Further, Applicant fails to teach any criticality of why the stretchable material portions cannot extend across the front of the torso section. Therefore, without proper teaching in the specification the stretchable material portions extending across the front of the torso section does not effect the flexion zones for the user of the shorts.

In regard to claim 30, Ragot teaches the elongated strip extending along an entire length of each of the first limb section and the torso section (figures 1 and 2).

In regard to claim 31, Ragot teaches a second limb section similar to the first limb section and the second limb section adapted to receive within and permit to pass through the opposing limb of the person (figures 1 and 2). The torso section joining together the first limb section and the second limb section (figures 1 and 2).

In regard to claim 32, Ragot teaches the elongated strip of relatively stretchable material having a substantially arcuate shape, with a portion of the stretchable material positioned along a central back area of the garment (18, 20). The elongated strip of relatively stretchable material extending continuously along a length of each of the first limb section and the second limb section (18, 20, 24).

In regard to claim 34, Ragot teaches the garment being sized and configured to fit loosely rather than snugly against the wearer's body when the wearer is in a normal standing position (paragraph 0006-0009).

In regard to claim 35, Ragot teaches the elongated strip of relatively stretchable material extending continuously from an edge of the first limb section remote from the torso section, across the first limb section and the torso section and the second limb section, to an edge of the second limb section remote from the torso section (18, 20, 24).

In regard to claim 36, Ragot teaches the torso section, the first limb section and the second limb section comprising a garment body having a first edge and an opposing edge remote therefrom. The elongated strip of relatively stretchable material extends from the one garment edge across the garment body to the opposing garment edge (figures 1 and 2).

In regard to claim 37, Ragot teaches the second portion being in pieces of material (figures 1-3).

However, Ragot fails to teach the second material portion being a single undivided path of material.

It would have been obvious to one having ordinary skill in the apparel arts to have provided the second material portion being a single undivided path of material of pieces of material making up the path, because as long as the second material portion provides flexion points to the user wearing the garment the single strip of material or pieces of material could be used and as supported in Applicant's specification on page 6, lines 3-5.

***Response to Arguments***

6. Applicant's arguments filed 01/20/06 have been fully considered but they are not persuasive.

I) In claims 1, 9 and 37, Applicant argues that Ragot et al. fails to teach a single undivided path of material or a second portion being a solid piece without any internal seams.

Examiner notes that as disclosed in Applicant's specification the stretchable material sections can be continuous or in separate pieces at separate locations on the garment. Therefore the single undivided path of stretchable material can be in separate pieces as desired or in one continuous piece because as long as the stretchable section extends across the torso to provide flexion areas to the garment, the stretchable sections can be configured as desired.

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II) In claim 7, Applicant argues that Ragot et al. fails to teach a less elastic first material portion, but a non-elastic first material portion.

Examiner notes that in Applicant's specification on page 4, lines 20-21 it states that the first material portion is either less stretchable or non-stretchable. As long as the second flexion portions are more stretchable than the first material portion, the first material portion can be either less stretchable or non-stretchable as desired.

III) Applicant argues that Ragot et al. fails to teach the flexion portion located on the front of the thigh.

Examiner notes that the front of the thigh is any area past the side of the thigh flexion portion 24 of Ragot et al. hits the front side and back portions of a user's thigh.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Webley, Dicker, Meyers, Bray and Lacoste are all cited to show closely related garment articles.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

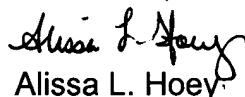
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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